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SENATE BILL 6720

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State of Washington

61st Legislature

2010 Regular Session

By Senators Fraser, Delvin, and Kline

Read first time 01/22/10. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to providing an optional tool for cities to use for  
2 programmatic environmental impact review; amending RCW 82.02.020;  
3 adding a new section to chapter 43.21C RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 encourage high-density, compact, in-fill development and redevelopment  
7 within existing urban areas in order to further existing goals of  
8 chapter 36.70A RCW, the growth management act, to promote the use of  
9 public transit and encourage further investment in transit systems, and  
10 to contribute to the reduction of greenhouse gas emissions by: (1)  
11 Encouraging local governments to adopt plans and regulations that  
12 authorize compact, high-density urban development as defined in section  
13 2 of this act; (2) providing for the funding and preparation of  
14 environmental impact statements that comprehensively examine the  
15 impacts of such development at the time that the plans and regulations  
16 are adopted; and (3) encouraging development that is consistent with  
17 such plans and regulations by precluding appeals under chapter 43.21C  
18 RCW.

1           NEW SECTION.   **Sec. 2.** A new section is added to chapter 43.21C RCW  
2 to read as follows:

3           (1) Cities with a population greater than five thousand, in  
4 accordance with their existing comprehensive planning and development  
5 regulation authority under chapter 36.70A RCW, and in accordance with  
6 this section, may adopt optional elements of their comprehensive plans  
7 and optional development regulations that apply within specified  
8 subareas of the cities, that are either:

9           (a) Areas designated as mixed-use or urban centers in a land use or  
10 transportation plan adopted by a regional transportation planning  
11 organization; or

12           (b) Areas within one-half mile of a major transit stop that are  
13 zoned to have an average minimum density of fifteen dwelling units or  
14 more per gross acre.

15           (2) A major transit stop is defined as:

16           (a) A stop on a high capacity transportation service funded or  
17 expanded under the provisions of chapter 81.104 RCW;

18           (b) Commuter rail stops;

19           (c) Stops on rail or fixed guideway systems, including transitways;

20           (d) Stops on bus rapid transit routes or routes that run on high  
21 occupancy vehicle lanes; or

22           (e) Stops for a bus or other transit mode providing fixed route  
23 service at intervals of at least thirty minutes during the peak hours  
24 of operation.

25           (3) A city that elects to adopt such an optional comprehensive plan  
26 element and optional development regulations shall prepare a nonproject  
27 environmental impact statement, pursuant to RCW 43.21C.030, assessing  
28 and disclosing the probable significant adverse environmental impacts  
29 of the optional comprehensive plan element and development regulations  
30 and of future development that is consistent with the plan and  
31 regulations.

32           (a) At least one community meeting must be held on the proposed  
33 subarea plan before the scoping notice for such a nonproject  
34 environmental impact statement is issued. Notice of scoping for such  
35 a nonproject environmental impact statement and notice of the community  
36 meeting required by this section must be mailed to all property owners  
37 of record within the subarea to be studied, to all property owners  
38 within one hundred fifty feet of the boundaries of such a subarea, and

1 to agencies with jurisdiction over the future development anticipated  
2 within the subarea. The notice of the community meeting must include  
3 general illustrations and descriptions of buildings generally  
4 representative of the maximum building envelope that will be allowed  
5 under the proposed plan and indicate that future appeals of proposed  
6 developments that are consistent with the plan will be limited. Notice  
7 of the community meeting must include signs located on major travel  
8 routes in the subarea. If the building envelope increases during the  
9 process, another notice complying with the requirements of this section  
10 must be issued before the next public involvement opportunity. Any  
11 person that has standing to appeal the adoption of this subarea plan or  
12 the implementing regulations under RCW 36.70A.280 has standing to bring  
13 an appeal of the nonproject environmental impact statement required by  
14 this subsection.

15 (b) As an incentive for development authorized under this section,  
16 a city shall consider establishing a transfer of development rights  
17 program in consultation with the county where the city is located, that  
18 conserves county-designated agricultural and forest land of long-term  
19 commercial significance. If the city decides not to establish a  
20 transfer of development rights program, the city must state in the  
21 record the reasons for not adopting the program. The city's decision  
22 not to establish a transfer of development rights program is not  
23 subject to appeal. Nothing in this subsection (3)(b) may be used as a  
24 basis to challenge the optional comprehensive plan or subarea plan  
25 policies authorized under this section.

26 (4)(a) Until July 1, 2018, a proposed development that is  
27 consistent with the optional comprehensive plan or subarea plan  
28 policies and development regulations adopted under subsection (1) of  
29 this section and that is environmentally reviewed under subsection (3)  
30 of this section may not be challenged in administrative or judicial  
31 appeals for noncompliance with this chapter as long as a complete  
32 application for such a development that vests the application or would  
33 later lead to vested status under city or state law is submitted to the  
34 city within a time frame established by the city, but not to exceed ten  
35 years from the date of issuance of the final environmental impact  
36 statement.

37 (b) After July 1, 2018, the immunity from appeals under this  
38 chapter of any application that vests or will vest under this

1 subsection or the ability to vest under this subsection is still valid,  
2 provided that the final subarea environmental impact statement is  
3 issued by July 1, 2018. After July 1, 2018, a city may continue to  
4 collect reimbursement fees under subsection (5) of this section for the  
5 proportionate share of a subarea environmental impact statement issued  
6 prior to July 1, 2018.

7 (5) It is recognized that a city that prepares a nonproject  
8 environmental impact statement under subsection (3) of this section  
9 must endure a substantial financial burden. A city may recover its  
10 reasonable expenses of preparation of a nonproject environmental impact  
11 statement prepared under subsection (3) of this section through access  
12 to financial assistance under RCW 36.70A.490 or funding from private  
13 sources. In addition, a city is authorized to recover a portion of its  
14 reasonable expenses of preparation of such a nonproject environmental  
15 impact statement by the assessment of reasonable and proportionate fees  
16 upon subsequent development that is consistent with the plan and  
17 development regulations adopted under subsection (4) of this section,  
18 as long as the development makes use of and benefits, as described in  
19 subsection (4) of this section, from the nonproject environmental  
20 impact statement prepared by the city. Any assessment fees collected  
21 from subsequent development may be used to reimburse funding received  
22 from private sources. In order to collect such fees, the city must  
23 enact an ordinance that sets forth objective standards for determining  
24 how the fees to be imposed upon each development will be proportionate  
25 to the impacts of each development and to the benefits accruing to each  
26 development from the nonproject environmental impact statement. Any  
27 disagreement about the reasonableness or amount of the fees imposed  
28 upon a development may not be the basis for delay in issuance of a  
29 project permit for that development. The fee assessed by the city may  
30 be paid with the written stipulation "paid under protest" and if the  
31 city provides for an administrative appeal of its decision on the  
32 project for which the fees are imposed, any dispute about the amount of  
33 the fees must be resolved in the same administrative appeal process.

34 (6) If a proposed development is inconsistent with the nonproject  
35 environmental impact statement developed under subsection (3) of this  
36 section or if potential impacts from a proposed development are not  
37 adequately addressed in the nonproject environmental impact statement

1 developed under subsection (3) of this section, the city shall require  
2 a supplement environmental impact statement.

3 **Sec. 3.** RCW 82.02.020 and 2009 c 535 s 1103 are each amended to  
4 read as follows:

5 Except only as expressly provided in chapters 67.28, 81.104, and  
6 82.14 RCW, the state preempts the field of imposing retail sales and  
7 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW  
8 67.16.060, conveyances, and cigarettes, and no county, town, or other  
9 municipal subdivision shall have the right to impose taxes of that  
10 nature. Except as provided in RCW 64.34.440 and 82.02.050 through  
11 82.02.090, no county, city, town, or other municipal corporation shall  
12 impose any tax, fee, or charge, either direct or indirect, on the  
13 construction or reconstruction of residential buildings, commercial  
14 buildings, industrial buildings, or on any other building or building  
15 space or appurtenance thereto, or on the development, subdivision,  
16 classification, or reclassification of land. However, this section  
17 does not preclude dedications of land or easements within the proposed  
18 development or plat which the county, city, town, or other municipal  
19 corporation can demonstrate are reasonably necessary as a direct result  
20 of the proposed development or plat to which the dedication of land or  
21 easement is to apply.

22 This section does not prohibit voluntary agreements with counties,  
23 cities, towns, or other municipal corporations that allow a payment in  
24 lieu of a dedication of land or to mitigate a direct impact that has  
25 been identified as a consequence of a proposed development,  
26 subdivision, or plat. A local government shall not use such voluntary  
27 agreements for local off-site transportation improvements within the  
28 geographic boundaries of the area or areas covered by an adopted  
29 transportation program authorized by chapter 39.92 RCW. Any such  
30 voluntary agreement is subject to the following provisions:

31 (1) The payment shall be held in a reserve account and may only be  
32 expended to fund a capital improvement agreed upon by the parties to  
33 mitigate the identified, direct impact;

34 (2) The payment shall be expended in all cases within five years of  
35 collection; and

36 (3) Any payment not so expended shall be refunded with interest to  
37 be calculated from the original date the deposit was received by the

1 county and at the same rate applied to tax refunds pursuant to RCW  
2 84.69.100; however, if the payment is not expended within five years  
3 due to delay attributable to the developer, the payment shall be  
4 refunded without interest.

5 No county, city, town, or other municipal corporation shall require  
6 any payment as part of such a voluntary agreement which the county,  
7 city, town, or other municipal corporation cannot establish is  
8 reasonably necessary as a direct result of the proposed development or  
9 plat.

10 Nothing in this section prohibits cities, towns, counties, or other  
11 municipal corporations from collecting reasonable fees from an  
12 applicant for a permit or other governmental approval to cover the cost  
13 to the city, town, county, or other municipal corporation of processing  
14 applications, inspecting and reviewing plans, or preparing detailed  
15 statements required by chapter 43.21C RCW, including reasonable fees  
16 that are consistent with section 2(5) of this act.

17 This section does not limit the existing authority of any county,  
18 city, town, or other municipal corporation to impose special  
19 assessments on property specifically benefitted thereby in the manner  
20 prescribed by law.

21 Nothing in this section prohibits counties, cities, or towns from  
22 imposing or permits counties, cities, or towns to impose water, sewer,  
23 natural gas, drainage utility, and drainage system charges. However,  
24 no such charge shall exceed the proportionate share of such utility or  
25 system's capital costs which the county, city, or town can demonstrate  
26 are attributable to the property being charged. Furthermore, these  
27 provisions may not be interpreted to expand or contract any existing  
28 authority of counties, cities, or towns to impose such charges.

29 Nothing in this section prohibits a transportation benefit district  
30 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
31 the legislative authority of a county, city, or town from approving the  
32 imposition of such fees within a transportation benefit district.

33 Nothing in this section prohibits counties, cities, or towns from  
34 imposing transportation impact fees authorized pursuant to chapter  
35 39.92 RCW.

36 Nothing in this section prohibits counties, cities, or towns from  
37 requiring property owners to provide relocation assistance to tenants  
38 under RCW 59.18.440 and 59.18.450.

1        Nothing in this section limits the authority of counties, cities,  
2 or towns to implement programs consistent with RCW 36.70A.540, nor to  
3 enforce agreements made pursuant to such programs.

4        This section does not apply to special purpose districts formed and  
5 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority  
6 conferred by these titles affected.

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